



March 13, 2000

Mr. Charles Karakashian, Jr.
Senior Assistant General Counsel
Legal Services
Texas Department of Public Safety
Box 4087
Austin, Texas 78773-0001

OR2000-0995

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 132579.

The Texas Department of Public Safety (the "department") received a request for the following information: (1) "correspondence, memoranda, departmental reports or guidelines on the use of thumbprints taken from applicants for driver's licenses, and DPS identification cards" and (2) "reports, guidelines, rules or memoranda regarding the firing of weapons by DPS officers from aircraft." You raise no exception to the disclosure of responsive information relating to the use of thumb prints.¹ We also note that you have released certain information relating to the firing of weapons from aircraft. You claim, however, that other information responsive to that segment of the request is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.²

¹Your letter to the requestor states that "[i]n response to request number one, the department has no such guidelines on the use of thumbprints taken from applicants for driver's licenses[.]" We note that the request also encompasses pertinent correspondence, memoranda or departmental reports. As the department has not sought to withhold from disclosure any information that is within the ambit of the first part of the request, any other responsive information is presumed to be public and must be released unless there is a compelling reason to withhold it from disclosure. *See* Gov't Code § 552.302.

²In reaching our conclusion here, we assume that the "sample of the requested material" that you submitted is genuinely representative of the requested information as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This letter ruling does not address, and therefore does not authorize the department to withhold, any other requested information that is substantially different from the information that you submitted to this office.

You state that the submitted information “involves Ranger reports and an Internal Affairs Investigation concerning the discharge of firearms from an aircraft during the Fort Davis matter.” You contend that the information in question “pertains to an ongoing criminal prosecution by the State of Texas” and therefore is excepted from disclosure under section 552.108. Section 552.108 of the Government Code, the “law enforcement” exception, provides in relevant part that “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

With regard to the department’s claim under section 552.108, this office submitted the following inquiry to you on February 29, 2000:³

Please advise us of the specific nature and status of the pending case to which you believe the submitted records pertain. The records are in conflict with your statement that they pertain to an ongoing criminal case in which there was a conviction that you believe was reversed and will be retried.

Having reviewed the additional documentation that you provided, we are satisfied that the submitted information relating to the firing of weapons from aircraft pertains to pending criminal prosecutions. Although the department is not a party to those cases, section 552.108 may be invoked by any proper custodian of information relating to alleged criminal conduct that remains under active investigation or prosecution. *See* Open Records Decision Nos. 624 at 5-6 (1994), 372 at 4 (1983). We therefore conclude that the department has demonstrated that release of the information in question would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 187 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); *see also* Open Records Decision No. 216 at 3 (1978) (noting interests addressed in *Houston Chronicle*). Consequently, the department may withhold the requested information from public disclosure under section 552.108(a)(1) of the Government Code. We note,

³Section 552.303 of the Government Code permits the attorney general to determine whether a governmental body’s submission of information under section 552.301 is sufficient for this office to render a decision and, if not, to notify the governmental body that the submission of additional information is necessary. Gov’t Code § 552.303(b), (c). The governmental body has seven days in which to submit the necessary additional information. Gov’t Code § 552.303(d). On March 7, 2000, the department timely submitted additional documentation of its claim under section 552.108.

however, that section 552.108 requires the release of “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c); *see also Houston Chronicle*, 531 S.W.2d at 186-87. The department must release the type of information that is normally found on the front page of an offense or arrest report, even if it does not literally appear on the front page of any of the materials that are at issue here. *See* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

We also note that the submitted information includes records relating to an autopsy. Section 11, article 49.25 of the Code of Criminal Procedure provides in relevant part:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. *The records are subject to required public disclosure in accordance with Chapter 552, Government Code[.]*

Code Crim. Proc. art. 49.25, § 11 (emphasis supplied). Generally, exceptions to public disclosure under chapter 552 of the Government Code are not applicable to information that another statute expressly makes public. *See* Open Records Decision No. 623 (1994). The autopsy report and death certificate included in the requested information are made public by article 49.25 of the Code of Criminal Procedure and must be released.

As we are able to make a determination under section 552.108, we do not address your claim under section 552.103.⁴ This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

⁴We note, however, that a successful claim under section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision Nos. 597 (1991), 362 (1983).

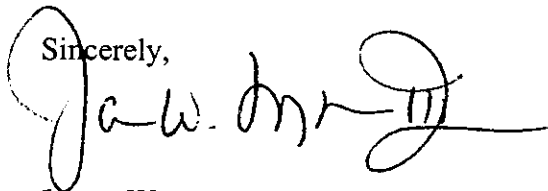
Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 132608

Encl. Submitted documents

cc: Mr. Lucius Lomax
P.O. Box 547
Austin, Texas 78767
(w/o enclosures)